

***Remarks***

Reconsideration of this Application is respectfully requested.

Claims 27-33, 35-37, 39 and 120-130 are pending in the application, with claims 27 and 120 being the independent claims. According to the Office Action, claims 28-30, 32, 33, 35, 37, 121-123, 125-127 and 129 are withdrawn from further consideration as being drawn to a nonelected species.

A Request for Continued Examination (RCE) is being filed concurrently herewith. Therefore, the finality of the Office Action dated March 24, 2005 should be withdrawn. *See* 37 C.F.R. § 1.114(d).

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 103***

Claims 27, 31, 36, 39, 120, 124, 128 and 130 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Savage, WO 99/64464 (hereinafter "Savage"); in view of Cormier *et al.*, *Int. J. Cancer* 75:517-524 (1998) (hereinafter "Cormier"); Schnell *et al.*, *J. Immunol.* 164:1243-1250 (2000) (hereinafter "Schnell"); and Zarour *et al.*, *Proc. Natl. Acad. Sci. USA* 97:400-405 (2000) (hereinafter "Zarour"). (March 24, 2005 Office Action, page 3). Applicants respectfully traverse this rejection for the reasons set forth in the response filed on September 26, 2005. In addition, Applicants present the following additional remarks.

As noted in Applicants' previous response, the Examiner has not established that a person of ordinary skill in the art would have been motivated to modify and/or combine the cited references. In response, the Examiner stated that "Applicant argues that none of the references suggest combination with any of the others, however, it is submitted that neither do the references provide any teaching that would suggest they could not be combined." (Advisory Action, Continuation Sheet, lines 2-4). In this regard, the Examiner is respectfully reminded that "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." (M.P.E.P. § 2142). Therefore, the Examiner cannot properly maintain the obviousness rejection on the basis that the cited references allegedly do not "provide any teaching that would suggest they could not be combined." In an obviousness analysis, it is legally improper for the Examiner to shift the initial burden to the Applicants to provide evidence that the references *could not* be combined. The initial burden lies with the Examiner to establish a motivation to combine.

The Examiner further stated that:

When the references are taken in their totality as seen by one skilled in the art, with the level of skill in the art being known to be high, the artisan would have been motivated with a reasonable expectation of success to combine the teachings of the cited references as stated previously. While none of the references implicitly suggest combining the references with one another, the motivation for the combination is properly founded in the prior art, as each reference represents basic research that the artisan would have used as a tool for the design of therapeutic methods.

(Advisory Action, Continuation Sheet, lines 5-9). The Examiner is respectfully reminded that any showing of combinability of references must be "clear and particular."

*See In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

"Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *Id.*, 175 F.3d at 999, 50 USPQ2d at 1617. Here, the Examiner's assertion that the cited references represent "basic research that the artisan would have used as a tool for the design of therapeutic methods," is exactly the kind of "broad conclusory statement" that *Dembiczak* prohibits in the context of an obviousness analysis. No evidence has been presented to support the Examiner's assertion that a person of ordinary skill in the art would have used the cited references as a "tool for the design of therapeutic methods."

For the reasons set forth in Applicants' previous replies, and in view of the arguments presented above, Applicants submit that a *prima facie* case of obviousness has not been established. Accordingly, Applicants request that the rejection under § 103 be reconsidered and withdrawn.

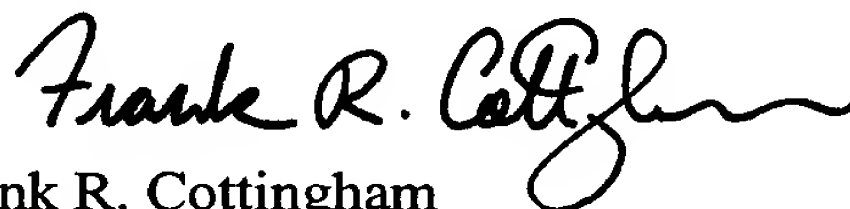
### ***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the Final Office Action dated March 24, 2005 and to the Advisory Action dated April 14, 2006, and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Frank R. Cottingham". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Frank R. Cottingham  
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